

Office of the Secretary, Interior

§ 4.125

subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781-1784.

(f) *Service.* (1) The party requesting issuance of subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a U.S. marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for 1 day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a U.S. District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

§ 4.121 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 4.112. The Board shall advise the absent party of the content of the proceedings had and that he has 5 days from the receipt of such notice within

which to show cause why the appeal should not be decided on the record made.

§ 4.122 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate in the circumstances. Appellant and respondent may offer at a hearing on the merits of such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding member or hearing officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding member or hearing officer. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

§ 4.123 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the presiding Board member or hearing officer shall otherwise order.

§ 4.124 Submission of briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Board member or hearing officer at the conclusion of the hearing.

POSTHEARING PROCEDURE RULES

§ 4.125 Decisions.

Decisions of the Board will be made upon the record, as described in